
By: Delegates Opara, Bobo, Patterson, and Branch

Introduced and read first time: February 19, 1997

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Human Relations Commission - Discrimination in Employment**

3 FOR the purpose of authorizing a hearing officer to hear certain complaints of
4 employment discrimination; providing that an unlawful employment practice is
5 established when the complaining party demonstrates that certain discriminatory
6 factors motivated the unlawful employment practice, even though other factors also
7 motivated the practice; providing that an aggrieved person may commence certain
8 civil actions in certain State courts; providing certain limitations on when certain
9 actions may be brought; providing for the jurisdiction of the court; providing where
10 certain civil actions may be brought; providing that the complaining party to certain
11 actions may receive certain damages; providing certain limitations to certain
12 damages; providing the right to a trial by jury under certain circumstances; defining
13 a certain term; and generally relating to discrimination in employment.

14 BY repealing and reenacting, with amendments,
15 Article 49B - Human Relations Commission
16 Section 11(e)
17 Annotated Code of Maryland
18 (1994 Replacement Volume and 1996 Supplement)

19 BY adding to
20 Article 49B - Human Relations Commission
21 Section 15(h), 16(i), 16A, and 16B
22 Annotated Code of Maryland
23 (1994 Replacement Volume and 1996 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article 49B - Human Relations Commission**

27 11.

28 (e) If upon all the evidence, the hearing examiner finds that the respondent has
29 engaged in any discriminatory act within the scope of any of these subtitles, the hearing
30 examiner shall so state the findings. The hearing examiner shall issue and cause to be
31 served upon the respondent an order requiring the respondent to cease and desist from

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1 the discriminatory acts and to take affirmative action to effectuate the purposes of the
2 particular subtitle. If the respondent is found to have engaged in or to be engaging in an
3 unlawful employment practice charged in the complaint, the remedy may include, but is
4 not limited to, reinstatement or hiring of employees, with or without back pay (payable by
5 the employer, employment agency, or labor organization, as the case may be, responsible
6 for the unlawful employment practice), or any other equitable relief that is deemed
7 appropriate. BACK PAY LIABILITY MAY NOT ACCRUE FROM A DATE MORE THAN 2
8 YEARS PRIOR TO THE FILING OF A CHARGE WITH THE COMMISSION. The award of
9 monetary relief shall be limited to a 36-month period. The complainant may not be
10 awarded monetary relief for losses incurred between the time of the Commission's final
11 determination and the final determination by the circuit court or higher appellate court,
12 as the case may be. Interim earning or amounts earnable with reasonable diligence by the
13 person or persons discriminated against shall operate to reduce the monetary relief
14 otherwise allowable. In cases of discrimination other than those involving employment, in
15 addition to the award of civil penalties as specifically provided in this article,
16 nonmonetary relief may be granted to the complainant, except that in no event shall an
17 order be issued that substantially affects the cost, level, or type of any transportation
18 services. In cases involving transportation services which are supported fully or partially
19 with funds from the Maryland Department of Transportation, no order may be issued
20 which would require costs, level, or type of transportation services different from or in
21 excess of those required to meet U.S. Department of Transportation regulations adopted
22 pursuant to § 504 of the Rehabilitation Act of 1974, codified as 49 C.F.R. 27 (1984), nor
23 would any such order be enforceable under § 12(a) of this subtitle. IN ADDITION TO THE
24 AUTHORITY GRANTED UNDER THIS SECTION, THE HEARING EXAMINER HAS THE
25 AUTHORITY PROVIDED UNDER §§ 14 THROUGH 18, INCLUSIVE, OF THIS ARTICLE.

26 15.

27 (H) THE TERM "COMPLAINING PARTY" MEANS THE COMMISSION OR A
28 PERSON WHO MAY BRING AN ACTION OR PROCEEDING UNDER THIS ARTICLE.

29 16.

30 (I) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, AN UNLAWFUL
31 EMPLOYMENT PRACTICE IS ESTABLISHED WHEN THE COMPLAINING PARTY
32 DEMONSTRATES THAT RACE, COLOR, SEX, AGE, RELIGION, ANCESTRY OR
33 NATIONAL ORIGIN, MARITAL STATUS, OR PHYSICAL OR MENTAL HANDICAP WAS A
34 MOTIVATING FACTOR FOR ANY EMPLOYMENT PRACTICE, EVEN THOUGH OTHER
35 FACTORS ALSO MOTIVATED THE PRACTICE.

36 16A.

37 (A) (1) (I) IN ACCORDANCE WITH THIS SECTION, AN AGGRIEVED PERSON
38 MAY COMMENCE A CIVIL ACTION IN AN APPROPRIATE STATE COURT NOT LATER
39 THAN 2 YEARS AFTER THE OCCURRENCE OR THE TERMINATION OF AN ALLEGED
40 DISCRIMINATORY EMPLOYMENT PRACTICE.

41 (II) THE COMPUTATION OF THE 2-YEAR PERIOD SHALL NOT
42 INCLUDE ANY TIME DURING WHICH AN ADMINISTRATIVE PROCEEDING UNDER
43 THIS SUBTITLE WAS PENDING FOR A COMPLAINT OR CHARGE BASED ON THE
44 DISCRIMINATORY EMPLOYMENT PRACTICE.

1 (2) AN AGGRIEVED PERSON MAY COMMENCE A CIVIL ACTION UNDER
2 THIS SUBSECTION NOT SOONER THAN 180 DAYS AFTER A COMPLAINT HAS BEEN
3 FILED UNDER § 9A OF THIS ARTICLE, AND REGARDLESS OF THE STATUS OF ANY
4 COMPLAINT.

5 (3) IN ANY ACTION OR PROCEEDING UNDER THIS SECTION, THE COURT,
6 IN ITS DISCRETION, MAY ALLOW THE PREVAILING PARTY, OTHER THAN THE
7 COMMISSION OR THE STATE, A REASONABLE ATTORNEY'S FEE (INCLUDING EXPERT
8 FEES) AS PART OF THE COSTS, AND THE COMMISSION AND THE STATE SHALL BE
9 LIABLE FOR COSTS THE SAME AS A PRIVATE PERSON.

10 (B) (1) THE CIRCUIT COURT OF THE COUNTY SHALL HAVE JURISDICTION
11 OVER ACTIONS BROUGHT UNDER THIS SECTION, IN ACCORDANCE WITH § 1-501 OF
12 THE COURTS ARTICLE, INCLUDING ANY PETITION IN EQUITY SEEKING INJUNCTIVE
13 RELIEF.

14 (2) THE CIVIL ACTION MAY BE BROUGHT IN THE CIRCUIT COURT OF
15 THE COUNTY:

16 (I) WHERE THE UNLAWFUL EMPLOYMENT PRACTICE IS ALLEGED
17 TO HAVE BEEN COMMITTED; OR

18 (II) WHERE THE RECORDS RELEVANT TO THE UNLAWFUL
19 EMPLOYMENT PRACTICE ARE MAINTAINED AND ADMINISTERED.

20 16B.

21 (A) IN AN ACTION OR ADMINISTRATIVE PROCEEDING BROUGHT BY A
22 COMPLAINING PARTY AGAINST A RESPONDENT WHO ENGAGED IN UNLAWFUL
23 INTENTIONAL DISCRIMINATION PROHIBITED UNDER § 16 OF THIS SUBTITLE, THE
24 COMPLAINING PARTY MAY RECOVER FROM THE RESPONDENT COMPENSATORY
25 AND PUNITIVE DAMAGES AS ALLOWED IN SUBSECTION (B) OF THIS SECTION IN
26 ADDITION TO ANY RELIEF AUTHORIZED UNDER § 11 OF THIS ARTICLE.

27 (B) (1) A COMPLAINING PARTY MAY RECOVER PUNITIVE DAMAGES UNDER
28 THIS SECTION AGAINST A RESPONDENT IF THE COMPLAINING PARTY
29 DEMONSTRATES THAT THE RESPONDENT ENGAGED IN DISCRIMINATORY
30 PRACTICES WITH MALICE OR WITH RECKLESS INDIFFERENCE TO THE FEDERALLY
31 PROTECTED RIGHTS OF AN AGGRIEVED INDIVIDUAL.

32 (2) COMPENSATORY DAMAGES AWARDED UNDER THIS SECTION MAY
33 NOT INCLUDE BACK PAY, INTEREST ON BACK PAY, OR ANY OTHER TYPE OF RELIEF
34 AUTHORIZED UNDER § 11 OF THIS ARTICLE.

35 (3) THE TOTAL AMOUNT OF COMPENSATORY DAMAGES AWARDED
36 UNDER THIS SECTION FOR FUTURE PECUNIARY LOSSES, EMOTIONAL PAIN,
37 SUFFERING, INCONVENIENCE, MENTAL ANGUISH, LOSS OF ENJOYMENT OF LIFE,
38 AND OTHER NONPECUNIARY LOSSES, MAY NOT EXCEED, FOR EACH COMPLAINING
39 PARTY:

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1 (I) IN THE CASE OF A RESPONDENT THAT HAS MORE THAN 14 AND
2 FEWER THAN 101 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE
3 CURRENT OR PRECEDING CALENDAR YEAR, \$50,000;

4 (II) IN THE CASE OF A RESPONDENT THAT HAS MORE THAN 100
5 AND FEWER THAN 201 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN
6 THE CURRENT OR PRECEDING CALENDAR YEAR, \$10,000;

7 (III) IN THE CASE OF A RESPONDENT THAT HAS MORE THAN 200
8 AND FEWER THAN 501 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN
9 THE CURRENT OR PRECEDING CALENDAR YEAR, \$200,000; AND

10 (IV) IN THE CASE OF A RESPONDENT THAT HAS MORE THAN 500
11 EMPLOYEES IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
12 PRECEDING CALENDAR YEAR, \$300,000.

13 (4) AN ORDER OF THE COURT MAY NOT REQUIRE THE ADMISSION OR
14 REINSTATEMENT OF AN INDIVIDUAL AS A MEMBER OF A UNION, OR THE HIRING,
15 REINSTATEMENT, OR PROMOTION OF AN INDIVIDUAL AS AN EMPLOYEE, OR THE
16 PAYMENT TO THE INDIVIDUAL OF ANY BACK PAY, IF THE INDIVIDUAL WAS
17 REFUSED ADMISSION, SUSPENDED, OR EXPELLED, OR WAS REFUSED EMPLOYMENT
18 OR ADVANCEMENT OR WAS SUSPENDED OR DISCHARGED FOR ANY REASON OTHER
19 THAN:

20 (I) DISCRIMINATION ON ACCOUNT OF RACE, COLOR, RELIGION,
21 SEX, NATIONAL ORIGIN, MARITAL STATUS, OR PHYSICAL OR MENTAL HANDICAP
22 THAT REASONABLY PRECLUDES THE PERFORMANCE OF THE EMPLOYMENT; OR

23 (II) A VIOLATION OF § 16 OF THIS SUBTITLE.

24 (C) ON A CLAIM IN WHICH AN INDIVIDUAL PROVES A VIOLATION UNDER §
25 16(I) OF THIS SUBTITLE, AND A RESPONDENT DEMONSTRATES THAT THE
26 RESPONDENT WOULD HAVE TAKEN THE SAME ACTION IN THE ABSENCE OF THE
27 IMPERMISSIBLE MOTIVATING FACTOR, THE COURT:

28 (1) MAY GRANT:

29 (I) DECLARATORY RELIEF;

30 (II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
31 INJUNCTIVE RELIEF; AND

32 (III) ATTORNEY'S FEES AND COSTS DEMONSTRATED TO BE
33 DIRECTLY ATTRIBUTABLE ONLY TO THE PURSUIT OF A CLAIM UNDER § 16(I); AND

34 (2) MAY NOT AWARD DAMAGES OR ISSUE AN ORDER REQUIRING ANY
35 ADMISSION, REINSTATEMENT, HIRING, PROMOTION, OR PAYMENT, DESCRIBED IN
36 SUBSECTION (B)(4) OF THIS SECTION.

37 (D) IF A COMPLAINING PARTY SEEKS COMPENSATORY OR PUNITIVE
38 DAMAGES UNDER THIS SECTION:

39 (1) EITHER PARTY MAY DEMAND A TRIAL BY JURY; AND

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1 (2) THE COURT MAY NOT INFORM THE JURY OF THE LIMITATIONS
2 DESCRIBED IN SUBSECTION (B)(3) OF THIS SECTION.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 1997.